

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,)	CRIMINAL NO. 3:00-626 (CMC)
)	
v.)	OPINION and ORDER
)	
Ryan Lee Zater,)	
)	
Defendant.)	
_____)	

This matter is before the court on Defendant’s motion for “Justice Pursuant to Deuteronomy § 16: 18-20 & 25: 1-3.” ECF No. 132. Defendant argues that the court “should heed the Torah Statutes and grant Mr. Zater a reduction in his sentence to an apt punishment in accordance with the particular nuances of his situation and God’s directive.” Mot. at 6.

To the extent Defendant’s motion can be construed to be a motion to reconsider, Rule 35(a) of the Federal Rules of Criminal Procedure permits a court to “correct a sentence that resulted from arithmetical, technical, or other clear error” within seven days after the oral announcement of the sentence. See Rules 35(a) and (c), Fed.R.Crim.P. The sentence was orally announced on March 28, 2001, and accordingly the deadline for any action by the court on a Rule 35(a) motion is long since passed. Therefore, the court is without jurisdiction to act upon Defendant’s motion in this regard.

Apart from Rule 35(a), a district court has no jurisdiction to alter a defendant’s term of imprisonment except as authorized by 18 U.S.C. § 3582 or 18 U.S.C. § 3742.

Title 18 United States Code § 3582(c) limits the court’s authority to modify a final judgment that includes a sentence of imprisonment to three specific circumstances. *See* 18 U.S.C. § 3582(c) (the court can modify a judgment (1) upon motion of the Director of the Bureau of Prisons (“BOP”) for statutorily-specified reasons, (2) upon motion of the government for substantial assistance, or

(3) upon motion of the defendant or the BOP, or upon the court's own motion, because of a subsequent lowering of the applicable sentencing range.). None of these circumstances applies to Defendant.

After an appeal, the court can modify a sentence if the sentence is found by the appellate court to have been imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, as provided for in 18 U.S.C. § 3742. Defendant's conviction and sentence were affirmed on appeal.

Defendant's motion does not allege that any of these circumstances applies; rather, Defendant seeks to argue that because of his age at the time of the offense and his rehabilitative efforts, his sentence should be reduced. The court lacks jurisdiction to modify Defendant's sentence.

Defendant's motion is a second or successive motion for relief under § 2255. Defendant's failure to seek permission to file a second or successive motion in the appropriate court of appeals prior to filing the motion in the district court is fatal to the outcome of any action on the motion in this court. Prior to filing a second or successive motion under § 2255, Defendant must obtain certification by a panel of the Fourth Circuit Court of Appeals allowing him to file a second or successive motion. As provided in 28 U.S.C. § 2244, "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). This he has not done.

Defendant's motion is dismissed without prejudice as this court is without jurisdiction to consider it.

CERTIFICATE OF APPEALABILITY

The governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
SENIOR UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
January 13, 2015